

ORDINANCE NUMBER O- **19942** (NEW SERIES)

DATE OF FINAL PASSAGE **MAR 29 2010**

AN ORDINANCE AMENDING THE SAN DIEGO MUNICIPAL CODE BY AMENDING CHAPTER 2, ARTICLE 2, DIVISION 3, TITLED "CITY ATTORNEY" BY AMENDING SECTION 22.0302 AND REPEALING SECTIONS 22.0303 AND 22.0304; AND AMENDING CHAPTER 2, ARTICLE 2, DIVISION 41, TITLED "SECURITIES DISCLOSURE" BY AMENDING SECTIONS 22.4101, 22.4103, 22.4104, 22.4105, 22.4106, 22.4107, 22.4108, 22.4109 AND RENUMBERING SECTION 22.4110 TO 22.4111, ALL RELATED TO THE CITY'S SECURITIES DISCLOSURE PROCEDURES.

WHEREAS, on June 3, 2008, the citizens of the City of San Diego approved Proposition C, which, among other things, amended City Charter section 39 to abolish the office of the Auditor and Comptroller and create a new office of the Chief Financial Officer in its place; and

WHEREAS, on November 14, 2006, the Securities and Exchange Commission entered a cease and desist order against the City for alleged securities fraud and required the City to retain an independent consultant to make recommendations to the City regarding the City's disclosure controls and procedures; and

WHEREAS, on April 24, 2009, City received the Second Annual Report of the Independent Consultant, which contained a number of recommended changes to the City's disclosure controls and procedures requiring amendments to the Municipal Code; and

WHEREAS, other amendments also are necessary to improve the City's disclosure controls and procedures and enhance the efficient functioning of the Disclosure Practices Working Group; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 2, Division 3 of the San Diego Municipal Code is hereby amended by amending section 22.0302 to read as follows:

§ 22.0302 Deputy City Attorney for Finance and Disclosure

To assist in carrying out the responsibilities of the City Attorney under Chapter 2, Article 2, Division 41 of the Municipal Code, the City Attorney shall designate a Deputy City Attorney for Finance and Disclosure who is knowledgeable about federal and state securities laws relating to municipal finance. The Deputy City Attorney for Finance and Disclosure shall be responsible for: assisting the City Attorney in carrying out the City Attorney's duties on the Disclosure Practices Working Group; undertaking and coordinating such due diligence as necessary for the issuance of the opinion of the City Attorney in connection with City financings; advising and assisting the City Council in connection with matters related to financings and disclosure matters, including requirements under federal and state securities laws; and providing any necessary and appropriate advice to the Audit Committee.

Section 2. That Chapter 2, Article 2, Division 3, sections 22.0303 and 22.0304 are hereby repealed.

Section 3. That Chapter 2, Article 2, Division 41 of the San Diego Municipal Code is hereby amended by amending sections 22.4101, 22.4103, 22.4104, 22.4105, 22.4106, 22.4107, 22.4108, 22.4109, 22.4110 and 22.4112 to read as follows:

§ 22.4101 Disclosure Practices Working Group Purpose and Intent

- (a) The Disclosure Practices Working Group shall have the administrative responsibilities set forth in this Division, in furtherance of the mandates of section 32.1 of the City Charter, to ensure the compliance by the City (including the City Council, City officers, and staff) with federal and state

securities laws and to promote the highest standards of accuracy in disclosures relating to securities issued by the City or by its *related entities*. It is the intent of the City Council that the Disclosure Practices Working Group be an internal working group of City staff and not a decision-making or advisory body subject to the provisions of the Ralph M. Brown Act.

- (b) The Disclosure Practices Working Group shall:
- (1) design and implement the City's disclosure controls and procedures;
 - (2) review those disclosures by the City or its *related entities* reasonably likely to reach investors or the securities markets;
 - (3) ensure the City's compliance with federal and state securities laws;
 - (4) ensure that City staff receive appropriate training regarding such controls and procedures, including training regarding the requirements of federal and state securities laws;
 - (5) on an annual basis, critically review and evaluate the City's disclosure controls and procedures, and compliance therewith;
 - (6) make such recommendations as it shall see fit regarding such disclosure controls and procedures and related matters to the City Manager, the City Attorney, the City Council and the Audit Committee; and
 - (7) ensure that the City Council, City officers, and staff comply with federal and state securities laws in connection with disclosures

provided by the City relating to securities issued by the City and
securities issued by *related entities*.

§22.4102 Definitions

[No change in text]

§ 22.4103 Organization of the Disclosure Practices Working Group

(a) The Disclosure Practices Working Group shall consist of the following:

- (1) the Chief Operating Officer or designee;
- (2) the City Attorney or designee;
- (3) the Chief Financial Officer;
- (4) the City Director of Debt Management;
- (5) the Deputy City Attorney for Finance and Disclosure, who shall
serve as Disclosure Coordinator of the Disclosure Practices
Working Group, with responsibility for its operation, including
arranging meetings, maintaining the agenda and arranging for
information to be provided to members and participants; and
- (6) the City's outside disclosure counsel.

(b) Designees shall have appropriate experience and knowledge of City
disclosure issues.

(c) The Independent Budget Analyst and the City Auditor, or their respective
designees, may attend and participate in meetings of the Disclosure
Practices Working Group.

§ 22.4104 Confidentiality of Draft Disclosure Documents

All draft disclosure documents submitted to the Disclosure Practices Working Group will remain the property of the originating department. Draft disclosure documents shall be kept confidential and may not be transmitted to third parties without the express written permission of the originating department.

§ 22.4105 Meetings

- (a) The Disclosure Practices Working Group shall meet as often as necessary to fulfill its obligations under this section, but not less than once a month. Any member of the Disclosure Practices Working Group may convene a meeting. Members may participate in meetings by telephone.
- (b) Any member or participant may place an item on the agenda of the Disclosure Practices Working Group.
- (c) Each member or participant of the Disclosure Practices Working Group who is a City official may invite such other personnel in his or her department or office to participate from time to time in meetings as he or she deems necessary for the effective operation of the Disclosure Practices Working Group.
- (d) The Audit Committee may appoint a representative to attend and observe meetings of the Disclosure Practices Working Group at which the audited financial statements of the City or its *related entities* are considered by the Disclosure Practices Working Group.
- (e) In order to enhance the ability of the City Council to rely on the processes of the Disclosure Practices Working Group, representatives of individual

Council offices may attend and observe meetings of the Disclosure Practices Working Group, provided that no meeting of the Disclosure Practices Working Group may be attended by a majority of City Councilmembers or by staff representing a majority of Council offices or any combination of Councilmembers or staff members that would represent a majority of Council offices.

- (f) Upon attendance at any meeting of the Disclosure Practices Working Group, Audit Committee representatives and Council office attendees shall be provided with draft disclosure documents only for review during such meetings.

§ 22.4106 Design and Implementation of Disclosure Controls and Procedures

- (a) The Disclosure Practices Working Group shall from time to time review the City's disclosure practices and procedures and shall recommend to the City Manager and the City Council such new disclosure controls and procedures as may be necessary or advisable to ensure the accuracy of the City's disclosures and the City's compliance with all applicable federal and state securities laws. Such disclosure controls and procedures shall be in writing and designed to ensure:
 - (1) that information material to the City's proposed and outstanding securities is compiled and communicated to senior City officials, including the City Manager, Chief Operating Officer, Chief Financial Officer, City Attorney, and the City Council, as appropriate, to allow timely decisions regarding disclosure;

- (2) that such information is prepared in a timely manner to enable such senior City officials to certify the accuracy of disclosures made in connection with City financings;
 - (3) compliance with all applicable federal and state securities laws, including ensuring the disclosure of all material information with respect to the City's proposed and outstanding securities; and,
 - (4) the preservation of an audit trail regarding information prepared and reviewed in connection with such disclosures.
- (b) Such disclosure controls and procedures shall address the accurate and timely disclosure of information in connection with securities issued by the City and by its *related entities*.
- (c) The City Manager shall implement the recommendations of the Disclosure Practices Working Group relating to disclosure controls and procedures as soon as practicable, or shall within 45 days of receiving such recommendations provide the City Council with a report as to why such recommendations should not be implemented. The City Council shall review such report of the City Manager to determine whether such report of the City Manager is reasonable and carries out the program of this Division.

§ 22.4107 Annual Evaluation and Report

- (a) Each year, the Disclosure Practices Working Group shall conduct an annual evaluation of the City's disclosure controls and procedures. In the

course of that review, representatives of the Disclosure Practices Working Group shall, as appropriate:

- (1) meet with key managers and staff of the City Manager's Office (particularly those managers and key staff responsible for the financial management of the City), the Chief Financial Officer's Office, and other relevant offices and departments to discuss the elements of the City's disclosure materials for which they are responsible and to evaluate the effectiveness of the disclosure controls and procedures;
- (2) meet with the City's independent auditors and disclosure counsel to review the design and operation of the disclosure controls and procedures; and
- (3) submit a written Annual Report on the Group's work and findings to the City Council on or before January 31, of each year.

(b) The City Manager and the Chief Financial Officer shall:

- (1) review the Annual Report required by subsection (a)(3);
- (2) certify in writing within 14 calendar days of the issuance of the Annual Report to the City Council that they have reviewed the report; and,
- (3) provide to the City Council any recommendations or dissenting opinions that they may have with regard to the content of the Annual Report.

§ 22.4108 Timely Preparation and Review of Disclosure Documents

- (a) The Disclosure Practices Working Group shall be responsible for the following:
 - (1) reviewing the form and content of all of the City's documents and materials prepared, issued, or distributed in connection with the City's disclosure obligations relating to its securities, including without limitation, private placement memoranda, preliminary and final official statements and any supplements thereto, Comprehensive Annual Financial Reports, Annual Reports, and other filings made with the Municipal Securities Rulemaking Board, rating agency presentations, web-site postings, and other communications reasonably likely to reach investors or the securities markets; and,
 - (2) providing for the timely review of all disclosure materials requiring approval and certification by the City Manager, Chief Financial Officer and City Attorney.
- (b) The Disclosure Practices Working Group also shall be responsible for reviewing disclosures provided by the City in connection with securities issued by the *related entities*, together with all of such documents and materials prepared, issued, or distributed in connection with such securities, to the extent that the City, the City Council, or City officers, or staff are responsible for the form or content of such documents or materials. As appropriate, the Disclosure Practices Working Group shall

provide for the timely review of all such disclosure materials requiring approval and certification by the City Manager, Chief Financial Officer and City Attorney.

- (c) The Disclosure Practices Working Group shall also be responsible for reviewing the audited financial statements of *related entities* if those audited financial statements will be appended to preliminary and final official statements or included in filings with the Municipal Securities Rulemaking Board.

§ 22.4109 Promote Compliance with Securities Laws

The Disclosure Practices Working Group shall promote the City's compliance with the federal and state securities laws relating to disclosure provided by the City in connection with the City's securities and those of its *related entities* and may make recommendations to the City Manager and the City Council regarding appropriate means for furthering such compliance by the City or the *related entities*.

§ 22.4110 Training for City Employees

- (a) The Disclosure Practices Working Group shall be responsible for arranging for mandatory training, on a regular basis, for City staff, officials, City Councilmembers, and the City Manager regarding their obligations relating to disclosure matters under federal and state securities laws, and in this connection shall work with the Independent Budget Analyst regarding training of Councilmembers.

- (b) The City Manager, the Chief Financial Officer, and the City Attorney shall ensure the attendance at such training of those persons for whom the Disclosure Practices Working Group recommends such training.

§ 22.4111 Requests of the Disclosure Practices Working Group

[No change in text]

§ 22.4112 Certifications by City Officials to the City Council

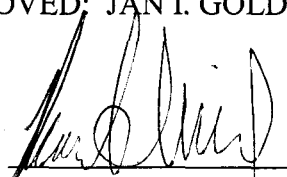
- (a) In connection with the approval of offering documents for securities by the City Council, the City Manager and the City Attorney each shall certify in writing to the City Council that to the best of his or her knowledge, such documents do not make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. In the event that the City Manager or the City Attorney is medically incapacitated or physically absent from the jurisdiction, a deputy or other authorized designee of such officer may make the certification required by this section.
- (b) Upon the issuance of the City's Comprehensive Annual Financial Report and in connection with the incorporation of all or portions of the Comprehensive Annual Financial Report in the disclosure documents of the City or the *related entities*, the Chief Financial Officer shall make the certifications to the City Council required by Chapter 2, Article 2, Division 7 of the San Diego Municipal Code.

Section 4. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public a day prior to its passage.

Section 5. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Brant C. Will
Deputy City Attorney

BCW:jdf
10/22/2009
03/09/2010.COR.COPY
Or.Dept:City Attorney
O-2010-42

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAR 23 2010.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 3.24.10
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor